IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.496 OF 2006

1.Mr.Narayanan Raman Velichapadu Nair, &
2.Mrs.Saraswati Narayanan Nair. ...Petitioners.
Versus
State of Maharashtra. ...Respondent.

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Mr.B.A.Aloor, Advocate for the Petitioners.
Mr.K.V.Saste, APP, for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.
DATED : 27th June, 2007.

P.C.:

1. Heard the learned Advocate for the petitioners-orig.accused and the learned APP for the State.

2. The petitioners are seeking discharge in a case under Sections 498-A, 306 of IPC which is pending before the Sessions Court at Pune. The said case pertains to C.R.No.51 of 2005 of Vishrantwadi Police Station.

3. The petitioners are the father-in-law and mother-in-law of Shija (deceased). Shija was married to the son of the petitioners in November 2002. The death of Shija occurred on account of hanging in March, 2005 i.e. within three years of the marriage. Narayan Nair, who is father of Shija, is the

complainant in the present case. Narayan has stated that his daughter Shija was married to Nandkumar i.e. son of the applicants in November, 2002. After the marriage his daughter resided along with her husband, father-in-law and mother-in-law. From December, 2002 onwards whenever Shija came to the house of the complainant she used to tell the complainant and his wife i.e. mother of Shija that due to catering business of her husband he came late i.e. around midnight and till then her father-in-law and mother-in-law did not give her food. Thereafter Nandkumar, husband of Shija told the complainant that he wishes to purchase a plot and he asked for Rs.50,000/- for the same. The complainant stated that he did not have the money. On account of this, the husband, father-in-law and mother-in-law of Shija got upset and they started beating Shija. They did not give her food to eat and they did not allow her to sleep. These three accused persons including the petitioners told Shija that her father had retired and where did the retiral benefits of her father go ? They asked her about how much out of the said retiral benefits were received by Shija ? They told her that she also had a right in the said money, hence she should get her share of the money. On this ground Shija was beaten by the petitioners. About 15 days prior to the incident Shija along with her husband

and father-in-law went to Kerala. Her mother-in-law had gone to Kerala some days prior. In Kerala Shija was beaten by her husband, which fact was informed by Shija to the complainant i.e. her father, on telephone from Kerala. Thereafter Shija returned to Pune on 2.3.2005 along with her father-in-law and husband. On 3.3.2005 Shija committed suicide by hanging herself. The statement of the complainant is corroborated by the statements of Shanta Nair (mother of Shija) and Santosh Nair (brother of Shija).

4. The learned Advocate for the petitioners contended that no *prima facie* case is made out against the petitioners. He has submitted that as no *prima facie* case is made out against the petitioners, they are entitled to be discharged. In support of his contention he has placed reliance on the observations made in paragraph Nos.12 & 14 of a decision of the Supreme Court in the case of **Dilawar Babu Kurane Vs. State of Maharashtra, reported in AIR 2002 SUPREME COURT 564**. On perusal of the material collected by the investigating agency in the present case, it is seen that *prima facie* case has been made out against both the petitioners under Sections 498-A, 306 of IPC.

5. The learned Advocate for the petitioners has

further submitted that Shija hung herself on 3.3.2005. However, the FIR is dated 5.3.2005. He has submitted that this delay in lodging the FIR clearly shows that the petitioners have been implicated as an afterthought. As far as this aspect is concerned, it is seen that Shija hung herself around 10:30 p.m. on 3.3.2005. Thereafter the complainant was informed. Police reached the spot. Hence, by the time the complainant came to know, it was almost midnight of 3.3.2005 i.e. early morning of 4.3.2005. The police prepared inquest panchnama. Thereafter post-mortem was conducted and the complainant lodged his complaint on 5.3.2005. In such circumstances, lodging of complaint on 5.3.2005 cannot be said to be such a delay as to raise a cloud of doubt regarding the prosecution case.

6. Thereafter, reliance was placed by the learned Advocate for the petitioners on the observations of the Supreme Court in the case of **Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijja & Ors. reported in AIR 1990 SUPREME COURT 1962**. The observations are as under :-

> .."The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or otherwise, is not exactly to

> be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage even a very strong suspicion founded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge against the accused in respect of the commission of that offence.
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> From the above discussion, it seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

7. If one peruses the statements of the complainant and other witnesses, in the present case, it is seen that a very strong suspicion is founded on the basis of material collected by the investigating agency and the material shows the existence of the factual ingredients constituting the offences under Sections 498-A and 306 of IPC.

8. The learned Advocate for the petitioners has further placed reliance on the decision of the Supreme Court in the case of **State of M.P. Vs.**

S.B.Johari & Ors. reported in AIR 2000 SUPREME COURT 665. I have perused the said decision. In the said decision also it is stated that at the stage of framing the charge, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. If the Court is satisfied that prima facie case is made out for proceeding further, then a charge has to be framed. It is further observed that the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

9. I have examined the material in the present case and I find that the facts emerging therefrom taken at their face value disclose all the ingredients for constituting the offences under Sections 498-A and 306 of IPC.

10. It was further submitted by the learned Advocate for the petitioners that demand for plot by itself would not bring the case under Section 498-A of IPC. No doubt any demand by itself would not bring the case within the four corners of Section 498-A of IPC. However, in the present case, it is seen that as the demand was not met, Shija was

ill-treated, harassed and beaten by her in-laws including the petitioners.

11. Lastly, it was submitted by the learned Advocate for the petitioners that no reliance can be placed on the statements of the father of the deceased and her relatives as they are interested witnesses and no statement of any independent witness has been recorded by the prosecution. As far as this aspect is concerned, it is well known that neighbours and other independent persons are generally loathe to get involved in matrimonial disputes. Moreover, what happens within the four corners of the matrimonial home is not always known to outsiders. Hence, just because the investigating agency has not been able to get any independent witness does not mean that the prosecution case is false.

12. Looking to the facts which are on record, I find that there is sufficient material in respect of the petitioners to proceed under Sections 498-A and 306 of IPC. Hence, I do not think that this is a fit case to discharge the petitioners. Hence, Application is rejected.

(SMT.V.K.TAHILRAMANI,J.)